

Statement of PPL Montana
Before the Natural Resources Committee
Of the Montana State House
Regarding House Bill No. 831

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Mr. Chairman, Members of the Committee.

My name is Holly Franz. I represent PPL Montana LLC. PPL Montana supports HB 831 for two primary reasons.

First, HB 831 is the only vehicle left this session to address Montana's most pressing water right issue – groundwater permitting. In the Upper Missouri River and the Teton River basin, there is no functional groundwater permitting system. PPL Montana does not believe Montana can afford to ignore this situation until next session.

Second, HB 831 meets the requirements for surface water/groundwater augmentation that PPL Montana testified to during the earlier hearings on HB 138 and 373. Those requirements are:

- Applicant should be required to provide scientific data to establish the impact, if any, of groundwater withdrawals on surface water flows.
- Definition of ground water must be scientifically sound and not a "legal fiction."
- Current protections in the law for senior water rights should be maintained with no amendments to the permitting and change criteria in 85-2-311 and 85-2-402.
- Ground water applicants should be allowed to proceed in the DNRC permitting process to show that an augmentation plan or other change in use can occur without adversely affecting senior water rights.

HB 831 is not perfect, but it clearly requires scientific evidence to establish the impact of surface water flows. I am sure there will be testimony that the bill requires too much science and is too expensive. I have spoken to hydrogeologists and compared the bill's requirements to DNRC's existing regulations and except for the water quality component, none of these requirements are new. DNRC's rules already require a net depletion analysis and require modeling of the impacts. The difference is – rather than being set forth in rule, HB 831 puts the requirements in statute.

I have prepared a section by section analysis of HB 831 and have proposed a number of amendments. I would like to highlight a few of the proposed amendments. First, as I read the bill, it can fit into DNRC's existing process in which DNRC makes the initial determination that an applicant has filed a correct and complete application based on substantial credible evidence. Once a complete and correct application is filed, the application is subject to objection, and the applicant must satisfy the permit criteria of 85-2-311 or the change criteria of 85-2-402. These are terms of art, and I have proposed amendments to conform the procedural aspects of the bill to existing law.

I have also proposed an amendment to delete Section 21 (page 37) that places additional requirements on permits and changes that have already been issued by DNRC. This section raises serious due process and constitutional issues and will inevitably lead to litigation. It should be deleted.

Finally, I have proposed amendments to remove the bureau of mines and geology (MBMG) from a regulatory role in ground water permitting. Section 16 (page 34, line 26-30) requires an applicant to file the hydrogeologic assessment with MBMG who has 90 days to determine if the assessment is scientifically adequate. IF MBMG does not rule in 90 days, it is assumed the science is adequate. MBMG is not set up to serve a regulatory role in groundwater permitting, and determinations on the adequacy of the science should not be made by default.

In summary, PPL Montana believes Montana should move forward to protect existing water rights while allowing ground water to be developed and existing water to be changed to meet Montana's changing economic needs. Please vote do pass for HB 831.